

# Internal Revenue bulletin

Bulletin No. 2002-6  
February 11, 2002

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

**Rev. Rul. 2002-5, page 461.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for February 2002.

**Rev. Rul. 2002-6, page 460.**

**Insurance companies; change in computation of life insurance reserves to use NAIC Actuarial Guideline 33.** A change in the computation of existing life insurance reserves for annuity contracts to take into account specific factors set forth by the National Association of Insurance Commissioners (NAIC) Actuarial Guideline 33 is a change in basis subject to section 807(f) of the Code.

**T.D. 8977, page 463.**

**REG-159079-01, page 493.**

Temporary and proposed regulations under section 1441 of the Code amend current sections of the regulations to allow withholding agents, who are also acceptance agents, to rely on a beneficial owner withholding certificate that does not contain an individual taxpayer identifying number (ITIN) in limited circumstances when the IRS is not issuing ITINs. Specifically, the amendments would have the effect of: (1) allowing certain withholding agents to obtain ITINs on an expedited basis for foreign individuals receiving unexpected payments and claiming tax treaty benefits with respect to those payments; and (2) allowing withholding agents to make unexpected payments to foreign individuals, who do not possess ITINs, when the use of the expedited process is unavailable.

**T.D. 8979, page 466.**

Final regulations under section 6320 of the Code set forth the IRS procedures for notice to taxpayers of the right to a hearing with respect to the filing of a federal tax lien on or after January 19, 1999. Among other things, the regulations describe how to request a hearing, what can be considered at the hearing, and how to obtain judicial review of a determination resulting from the hearing.

**T.D. 8980, page 477.**

Final regulations under section 6330 of the Code set forth the IRS procedures for notice to taxpayers of the right to a hearing concerning an IRS levy made on or after January 19, 1999. Among other things, the regulations describe how to request a hearing, what can be considered at the hearing, and how to obtain judicial review of a determination resulting from the hearing.

**Notice 2002-10, page 490.**

This document clarifies the application of sections 145(a)(2) and 514 of the Code to the investment of gross proceeds of qualified 501(c)(3) bonds.

### EMPLOYEE PLANS

**Notice 2002-7, page 489.**

**Minimum funding standards; terrorist attack relief.** This notice provides certain relief for all plans subject to the minimum funding standards of section 412 of the Code and additional relief from the minimum funding standards for certain plans affected by the terrorist attack of September 11, 2001.

Actions Relating to Court Decisions is on the page following the Introduction.  
Finding Lists begin on page ii.

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Department of the Treasury  
Internal Revenue Service

## EXEMPT ORGANIZATIONS

### **Notice 2002-10, page 490.**

This document clarifies the application of sections 145(a)(2) and 514 of the Code to the investment of gross proceeds of qualified 501(c)(3) bonds.

## EMPLOYMENT TAX

### **Announcement 2002-8, page 494.**

This announcement provides notice that the deadline for written comments to Notices 2001-72 (2001-49 I.R.B. 548) and 2001-73 (2001-49 I.R.B. 549) has been extended from February 14, 2002, to April 23, 2002. Notices 2001-72 and 2001-73 contain proposed rules regarding the application of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding to the exercise of statutory stock options. A public hearing is rescheduled for May 14, 2002.

### **Announcement 2002-11, page 494.**

This announcement contains a change in the hearing date for REG-142686-01 (2001-49 I.R.B. 561) from March 7, 2002, to May 14, 2002. These regulations relate to the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and collection of income tax at source to statutory stock options. A public hearing is scheduled for May 14, 2002.

## ADMINISTRATIVE

### **Rev. Proc. 2002-15, page 490.**

This procedure provides guidance under section 7701 of the Code for a newly formed entity that requests relief for a late initial classification election filed within 6 months of the due date of the initial election.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered,

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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# Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The

Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit

court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decision:

**Sutherland Lumber-Southwest,  
Inc. v. Commissioner<sup>1</sup>**  
255 F.3d 495 (8<sup>th</sup> Cir. 2001)

The Commissioner ACQUIESCES in result only in the following decision:

**Internet Corporation & Subs. v.  
Commissioner<sup>2</sup>**  
Docket No. 8246-97  
Opinion filed: Oct. 2, 2001  
(117 T.C. No. 13)  
Decision: Not yet entered

<sup>1</sup> Acquiescence relating to whether a taxpayer that provides vacation flights to employees and includes the value of the flights in the employees' income using the SIFL rates of Treas. Reg. section 1.61-21(g) may then deduct the full (higher) cost of providing the flights, notwithstanding the deduction disallowance provisions of I.R.C. section 274(a).

<sup>2</sup> Acquiescence in result only relating to whether deductions for state income tax deficiencies and interest thereon as well as interest on federal income tax deficiencies, all attributable to tax liabilities arising at least three years before the beginning of the taxable year, and taken into account in computing a net operating loss, qualify for a ten-year carryback as specified liability losses under former I.R.C. section 172(f)(1)(B).

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

**Insurance companies; change in computation of life insurance reserves to use NAIC Actuarial Guideline.** A change in the computation of existing life insurance reserves for annuity contracts to take into account specific factors set forth by the National Association of Insurance Commissioners (NAIC) in Actuarial Guideline 33 is a change in basis subject to § 807(f) of the Internal Revenue Code.

## Rev. Rul. 2002-6

### ISSUE

Whether, under the circumstances described below, a change in the computation of existing life insurance reserves for annuity contracts is a change in basis subject to § 807(f) of the Code?

### FACTS

The National Association of Insurance Commissioners (NAIC) adopted Actuarial

Guideline XXXIII, Determining Minimum Commissioners' Annuities Reserve Valuation Method (CARVM) Reserves for Individual Annuity Contracts (AG 33), effective on December 31, 1995, for all contracts issued on or after January 1, 1981.

IC, a life insurance company within the meaning of § 816(a), issued Annuity Contracts in 1999. In computing its end of the year (EOY) life insurance reserves for Annuity Contracts under § 807(d)(2) for taxable years 1999 and 2000, IC did not take into account several specific factors set forth by the NAIC in AG 33. In 2001, IC modified its reserve computation to take those factors into account in computing its EOY 2001 reserves for Annuity Contracts. IC's EOY 2001 reserves for Annuity Contracts equaled \$ 8x. If IC had continued using its former method, its EOY 2001 life insurance reserves for Annuity Contracts would have been \$ 6x.

For taxable years 1999 through 2001, the EOY reserve computed under § 807(d)(2) for Annuity Contracts exceeded the net surrender value of the contracts. The 1999 and 2000 tax years for IC remain open.

### APPLICABLE LAW AND ANALYSIS

Section 807(c) lists various items, including life insurance reserves, that are taken into account in determining life insurance company taxable income.

Section 807(d)(1) provides that, other than for purposes of § 816 (relating to qualification as a life insurance company), the amount of the life insurance reserve for any contract is the greater of—(i) the net surrender value of the contract, or (ii) the reserve determined under § 807(d)(2). At no time may the reserve for a contract exceed the amount taken into account with respect to that contract as of that time in determining the statutory reserves set forth in the company's annual statement.

Sections 807(d)(2) and 807(d)(3)(B)(ii) provide that the reserve for any contract must be determined using the tax reserve method applicable to that

type of contract. The tax reserve method applicable to annuity contracts is the CARVM prescribed by the NAIC and in effect on the date of the issuance of the contract.

Section 807(f) provides that if the basis for determining any item referred to in § 807(c) as of the close of any taxable year differs from the basis for determining that item as of the close of the preceding taxable year, then 1/10 of the difference between— (i) the amount of the item at the close of the taxable year, computed on the new basis, and (ii) the amount of the item at the close of the taxable year, computed on the old basis, that is attributable to contracts issued before the taxable year, is taken into account (as either a deduction or an item of gross income), for each of the succeeding 10 taxable years.

AG 33 contains the statement that the guideline “does not constitute a change of method or basis from any previously used method.” This statement could lead one to conclude that taking this guideline into account in a company’s CARVM computation does not result in a change in basis. However, for purposes of determining life insurance company taxable income, any change in a company’s tax reserve method is a change in basis subject to the change in basis rules under § 807(f). See Rev. Rul. 94–74 (1994–2 C.B. 157).

Under § 807(d), IC is required to calculate the life insurance reserves for Annuity Contracts using CARVM. For taxable years 1999 and 2000, IC did not take into account several specific factors set forth in AG 33. For tax year 2001, IC modified its reserve computation to take those factors into account in computing its EOY 2001 reserves for Annuity Con-

tracts. IC’s change of reserving method is a change in basis under § 807(f).

IC’s EOY 2001 life insurance reserves for Annuity Contracts, computed on the new basis, exceed the EOY 2001 reserves for those contracts, computed on the old basis, by \$2x. Pursuant to the adjustment rules of § 807(f), IC can take 1/10 of the \$2x into account as a deduction under § 805(a)(2) in each of succeeding 10 taxable years, beginning with the 2002 tax year. In the alternative, in accordance with Rev. Rul. 94–74, IC may file amended returns for 1999 and 2000 and recalculate its tax reserves for Annuity Contracts for those years in accordance with AG 33.

#### HOLDING:

A change in the computation of existing life insurance reserves by IC for Annuity Contracts to take into account specific factors set forth in AG 33 is a change in basis subject to § 807(f) of the Code.

#### DRAFTING INFORMATION:

The principal author of this revenue ruling is Linda Boyd of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Ms. Boyd at (202) 622–3970 (not a toll-free call).

### Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002–5, on this page.

### Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for February 2002.

#### Rev. Rul. 2002–5

This revenue ruling provides various prescribed rates for federal income tax purposes for February 2002 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2002-5 TABLE 1

Applicable Federal Rates (AFR) for February 2002

*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	2.74%	2.72%	2.71%	2.70%
110% AFR	3.01%	2.99%	2.98%	2.97%
120% AFR	3.29%	3.26%	3.25%	3.24%
130% AFR	3.57%	3.54%	3.52%	3.51%
<i>Mid-Term</i>				
AFR	4.63%	4.58%	4.55%	4.54%
110% AFR	5.10%	5.04%	5.01%	4.99%
120% AFR	5.58%	5.50%	5.46%	5.44%
130% AFR	6.04%	5.95%	5.91%	5.88%
150% AFR	6.99%	6.87%	6.81%	6.77%
175% AFR	8.18%	8.02%	7.94%	7.89%
<i>Long-Term</i>				
AFR	5.60%	5.52%	5.48%	5.46%
110% AFR	6.16%	6.07%	6.02%	5.99%
120% AFR	6.73%	6.62%	6.57%	6.53%
130% AFR	7.31%	7.18%	7.12%	7.07%

REV. RUL. 2002-5 TABLE 2

Adjusted AFR for February 2002

*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	2.49%	2.47%	2.46%	2.46%
Mid-term adjusted AFR	3.90%	3.86%	3.84%	3.83%
Long-term adjusted AFR	5.01%	4.95%	4.92%	4.90%

REV. RUL. 2002-5 TABLE 3

Rates Under Section 382 for February 2002

Adjusted federal long-term rate for the current month	5.01%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.01%

REV. RUL. 2002-5 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for February 2002

Appropriate percentage for the 70% present value low-income housing credit	8.19%
Appropriate percentage for the 30% present value low-income housing credit	3.51%

REV. RUL. 2002-5 TABLE 5

Rate Under Section 7520 for February 2002

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.6%
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**Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

**Section 1441.—Withholding of Tax on Nonresident Aliens**

*26 CFR 1.1441-6T: Claim of reduced withholding under an income tax treaty (temporary).*

**T.D. 8977**

**DEPARTMENT OF THE  
TREASURY  
Internal Revenue Service  
26 CFR Parts 1 and 301**

**Taxpayer Identification  
Number Rule Where Taxpayer  
Claims Treaty Rate and Is  
Entitled to an Unexpected  
Payment**

AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains temporary regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required



individual taxpayer identification number. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the cross-referenced notice of proposed rulemaking on this subject (REG-159079-01) on page 493 of this Bulletin.

**DATES: Effective Date:** These temporary regulations are effective January 17, 2002.

**Applicability Date:** For dates of applicability, see § 1.1441-6T(h)(6).

**FOR FURTHER INFORMATION CONTACT:** Jonathan A. Sambur (202) 622-3840 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Background

Payments of U.S. source income to foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under the Internal Revenue Code and associated Treasury regulations. Specifically, under section 871(a), nonresident alien individuals are subject to a 30 percent tax on certain items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Those items of income include interest, dividends, royalties, compensation, and other fixed or determinable annual or periodical income. The tax liability imposed under section 871(a) on the payment of such items of income is generally collected by way of withholding at the source pursuant to section 1441(a). Withholding agents are generally required to report payments of such income to the IRS on Form 1042-S.

The 30 percent rate of tax can be reduced under an income tax treaty. Under current Treasury regulations, a withholding agent may generally rely on a Form W-8BEN, “*Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*,” or Form 8233, “*Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*,” provided by, or for, the foreign individual certifying

eligibility for a reduced rate of tax under an income tax treaty.

Section 1.1441-1(e)(4)(vii) generally provides that a taxpayer identifying number (TIN) must be furnished on a Form W-8BEN or Form 8233 in order for a foreign individual to obtain the benefit of reduced withholding under an income tax treaty. See § 1.1441-6(b)(2)(ii). Treasury and the IRS have recently become aware, however, of certain unusual cases where an unexpected payment to a nonresident alien individual claiming treaty benefits arises on short notice. In general, a foreign individual receiving such an unexpected payment currently may be unable to obtain a TIN prior to payment. In such a case, unless the foreign individual already has a TIN, the withholding agent would be required to withhold tax at the 30 percent rate, rather than the treaty rate, and the foreign individual would be required to file for a refund in order to obtain the benefits of the income tax treaty.

To alleviate this filing burden on foreign individuals, IRS is putting in place administrative procedures that will allow certain withholding agents, who also are acceptance agents (as defined in § 301.6109-1(d)(3)(iv)) and who make unexpected payments to foreign individuals, to apply for and obtain an individual taxpayer identification number (ITIN) for such individuals on an expedited basis. However, Treasury and IRS recognize that, in certain circumstances, these expedited ITIN procedures will not be sufficient to ensure that foreign individuals receiving an unexpected payment can obtain the benefits of a reduced rate of withholding under an income tax treaty at the time of payment. Accordingly, these temporary regulations will allow, in limited circumstances, withholding agents to rely on a Form W-8BEN or Form 8233 that does not include a TIN for purposes of withholding at the reduced treaty rate.

The proposed rules are published elsewhere in this issue of the Bulletin.

### Explanation of Provisions

These temporary regulations amend § 1.1441-1(b)(7) and § 1.1441-6(b)(1) and add new § 1.1441-6T(h) to provide a limited exception to the requirement that a foreign individual provide a TIN to its withholding agent before obtaining a

reduced rate of withholding tax under an income tax treaty. As noted above, under the current regulatory framework, a foreign individual generally is required to put the individual's TIN on the Form W-8BEN or Form 8233 in order to claim a reduced rate of withholding based upon a tax treaty. If a foreign individual does not have a TIN, a withholding agent who is an acceptance agent, as defined in § 301.6109-1(d)(3)(iv), can aid the foreign individual in obtaining an ITIN.

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the IRS has decided to permit certain withholding agents to enter into special acceptance agent agreements with the IRS that will allow those withholding agents, in their capacity as acceptance agents, to seek ITINs through an expedited process for these foreign individuals claiming treaty benefits. It is anticipated that any withholding agent who qualifies as an acceptance agent under § 301.6109-1(d)(3)(iv) and who anticipates making unexpected payments will be allowed to enter into such an agreement. However, the IRS intends to allow the use of the expedited process only when an application for an ITIN using the standard process will not generate an ITIN in time for the payment.

These temporary regulations provide that, in limited circumstances, a withholding agent who has entered into such a special acceptance agent agreement may rely on a beneficial owner withholding certificate without regard to the requirement that it include a TIN. Generally, these temporary regulations provide that, in order for a withholding agent to rely on a beneficial owner withholding certificate that does not contain a TIN, the withholding agent must be unable to obtain an ITIN for the foreign individual because the IRS is not issuing ITINs at the time of an unexpected payment to the individual or any time prior to the time of payment when the withholding agent had knowledge of the unexpected payment and the nature of the unexpected payment must be such that it cannot reasonably be delayed until the withholding agent could obtain an ITIN for the foreign individual through the use of the expedited process. The temporary regulations further provide that the IRS must receive the foreign individual's application for an ITIN on the

first business day following payment. At this time, the IRS intends to issue ITINs through the expedited process from 6 A.M. until 11:30 P.M. E.S.T., except for weekends and holidays. The IRS intends to increase the availability of this expedited process in the future.

Except as provided in these regulations or in § 1.1441-6(c), a foreign individual will continue to be required to provide a TIN on a beneficial owner withholding certificate (Form W-8BEN or Form 8233) in order to obtain the benefit of a reduced rate of withholding under an income tax treaty.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities, therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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### Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 2. Section 1.1441-1T is added to read as follows:

*§ 1.1441-1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).*

(a) through (b)(7)(i)(C) [Reserved] For further guidance, see § 1.1441-1(a) through (b)(7)(i)(C).

(b)(7)(i)(D) The withholding agent has complied with the provisions of § 1.1441-6(d).

(b)(7)(ii) through (f)(2)(ii) [Reserved] For further guidance, see § 1.1441-1(b)(7)(ii) through (f)(2)(ii).

#### § 1.1441-6 [Amended]

Par. 3. In § 1.1441-6, the fifth sentence of paragraph (b)(1) is amended by adding the language “and § 1.1441-6T(h)” immediately following the language “(c)(1) of this section”.

Par. 4. Section 1.1441-6T is added to read as follows:

*§ 1.1441-6T Claim of reduced withholding under an income tax treaty (temporary).*

(a) through (g) [Reserved] For further guidance, see § 1.1441-6(a) through (g).

(h) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits*—(1) *General rule.* Except as provided in § 1.1441-6(c) or paragraph (h)(2) of this section, for purposes of § 1.1441-6(b)(1), a withholding agent may not rely on a beneficial owner withholding certificate, described in § 1.1441-6(b)(1), that does not include the beneficial owner's taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of § 1.1441-6(b)(1), a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner's TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109-1(d)(3)(iv) of this chapter (hereafter the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circum-

stances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS), Philadelphia Service Center, because the IRS, Philadelphia Service Center is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (h)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W-7) that complies with the requirements of § 301.6109-1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109-1(d)(3)(iv)(A)(4) of this chapter, to the IRS, Philadelphia Service Center, during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (h)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (h) are illustrated by the following examples:

*Example 1.* G, a citizen and resident of Country Y, a country with which the U.S. has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the U.S. for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins \$5000 in slot machine play at

Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W-7, including the required certification, for G, to the IRS, Philadelphia Service Center for an expedited ITIN. Pursuant to § 1.1441-6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the \$5000 to G without withholding U.S. tax based on the treaty exemption.

*Example 2.* The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the \$5000 payment to G.

*Example 3.* The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

*Example 4.* P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the U.S. has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the U.S. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P \$5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however,

contain an ITIN for P. On Tuesday, University U faxes a completed Form W-7, including the required certification, for P, to the IRS, Philadelphia Service Center, for an expedited ITIN. Pursuant to § 1.1441-6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay \$5000 to P without withholding U.S. tax based on the treaty exemption.

(6) *Effective date.* This paragraph (h) applies to payments made after December 31, 2001.

## PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 6. In § 301.6109-1, paragraph (g)(3) is revised to read as follows:

§ 301.6109-1 *Identifying numbers.*

\* \* \* \* \*

(g) \* \* \*

(3) [Reserved] For further guidance, see § 301.6109-1T(g)(3).

\* \* \* \* \*

Par. 7. Section 301.6109-1T is added to read as follows:

§ 301.6109-1T *Identifying numbers (temporary).*

(a) through (g)(2) [Reserved] For further guidance, see §§ 301.6109-1(a) through (g)(2).

(g)(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This

paragraph (g)(3) applies to payments made after December 31, 2001.

(h) through (j)(2)(iii) For further guidance, see § 301.6109(h) through (j)(2)(iii).

Robert E. Wenzel,  
Deputy Commissioner of  
Internal Revenue.

Approved December 21, 2001.

Mark Weinberger,  
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 16, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2002, 67 F.R. 2327)

## Section 6320.—Notice and Opportunity for Hearing Upon Filing of Notice of Lien

26 CFR 301.6320-1: Notice and opportunity for hearing upon filing of notice of federal tax lien.

T.D. 8979

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

### Notice and Opportunity for Hearing upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). A taxpayer receiving notice of a NFTL may request a hearing with IRS Office of Appeals and may subsequently seek judicial review of Appeals' determination. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the IRS files a NFTL.

**DATES:** *Effective Date:* These regulations are effective on January 18, 2002.

**APPLICABILITY DATE:** These regulations apply to any notice of Federal tax lien which is filed on or after January 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jerome D. Sekula, (202) 622-3610 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) after the filing of a notice of federal tax lien (NFTL). These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS files a NFTL on or after January 19, 1999.

On January 22, 1999, temporary regulations (T.D. 8810, 1999-1 C.B. 470) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG-116824-98, 1999-1 C.B. 508) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). No public hearing was requested or held. No written comments were received within the 90-day period provided for comments, although two comments were received after this period.

Section 6330 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing prior to a levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (T.D. 8809, 1999-1 C.B. 478) implementing the changes made by section 3401 of RRA 1998 with respect to

section 6330 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG-117620-98, 1999-1 C.B. 510) cross-referencing those temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). Final regulations under section 6330 are being published in the **Federal Register** along with these final regulations under section 6320.

After consideration of the comments, the proposed regulations, with certain changes to reflect the IRS administrative practice under section 6320, are adopted as final regulations. These comments and changes are discussed below.

#### Summary of Comments

Although the two comments were directed generally at the proposed regulations under section 6330, the comments are discussed here because they address provisions that, in large part, apply to both section 6320 and section 6330.

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (*i.e.*, persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—*i.e.*, the taxpayer.

With respect to section 6330, the legislative history to that section indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, *i.e.*, the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (which is applicable to both section 6320 and section 6330) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that taxpayers should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of

Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

### Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the IRS officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer following the filing of a NRTL. To reflect the recent reorganization of the IRS, paragraph (a)(1) of the final regulations eliminates reference to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS' administrative practice has been to treat these requests as complying with

the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted, or where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to when in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final

determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations addressed whether a Notice of Determination was required to be issued within a certain period of time after the CDP hearing. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify that there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6320(c) incorporates by reference section 6330(e), which generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6320 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods and for the tax and tax periods covered by the CDP Notice under section 6320, if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS also is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6320 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax periods set out in the CDP Notice.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C.

chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6320-1 is added under the undesignated centerheading "Lien for Taxes" to read as follows:

*§ 301.6320-1 Notice and opportunity for hearing upon filing of notice of federal tax lien.*

(a) *Notification*—(1) *In general.* For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see § 301.6212-2.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person entitled to notice under section 6320?

A-A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q-A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A-A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q-A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A-A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q-A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A-A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A-A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A-A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiled of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refiled the NFTL, an administrative hearing before the IRS Office of Appeals

(Appeals), or assistance from the National Taxpayer Advocate.

Q-A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A-A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A-A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q-A9. How will notification under section 6320 be accomplished?

A-A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, *Request for a Due Process Hearing*. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q-A10. What must a CDP Notice given under section 6320 include?

A-A10. These notices must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.
- (iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.
- (iv) The statutory provisions and the procedures relating to the release of liens on property.

Q-A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A-A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q-A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A-A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A-B3 of paragraph (b)(2) and Q&A-C8 of paragraph (c)(2) of this section.

(3) *Examples*. The following examples illustrate the principles of this paragraph (a):

*Example 1*. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

*Example 2*. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against

ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

*Example 3*. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a CDP hearing*—(1) *In general*. A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A-B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of the Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.



Q-B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A-B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q-B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A-B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q-B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A-B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However,

any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

*Example 1.* H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

*Example 2.* Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D's federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form

12153 (*Request for a Collection Due Process Hearing*) that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1-800-829-3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS



office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

**Q-C3.** When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

**A-C3.** A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

**Q-C4.** How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

**A-C4.** The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

**Q-C5.** Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

**A-C5.** No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

**Q-C6.** Where should the written request for a CDP hearing be sent?

**A-C6.** The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP Notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing their taxpayer identification number (SSN or TIN).

**Q-C7.** What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

**A-C7.** If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

**Q-C8.** When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

**A-C8.** A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

**Q-C9.** Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

**A-C9.** Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the

NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

**(3) Examples.** The following examples illustrate the principles of this paragraph (c):

*Example 1.* A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

*Example 2.* Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

*Example 3.* Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

*Example 4.* Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute

CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q-D2. Will a CDP hearing with respect to one tax period be combined

with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q-D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A-D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid tax and tax period involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the unpaid tax and tax periods shown on the NFTL.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

Q-D6. How are CDP hearings conducted?

A-D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative

does not have the right to subpoena and examine witnesses at a CDP hearing.

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of business taxpayers, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6320(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the

taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of section 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory

notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A-E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q-E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E5. No. A taxpayer is precluded by the doctrine of *res judicata* and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives would include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination

will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q-E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the NFTL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency

for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer with respect to such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

*Example 1.* The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

*Example 2.* Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

*Example 3.* The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination—(1) In general.* Unless the taxpayer provides the IRS a written

withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If

the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under sections 6502,

6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q-G3. What, if any, enforcement actions can the IRS take during the suspension period?

A-G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-

levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

*Example 1.* The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

*Example 2.* Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general*. A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an “equivalent hearing.” The equivalent hearing will be held by Appeals and generally will follow Appeals’ procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day

period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q-I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals’ denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals’ determination on those issues, as provided by section 6015(e).

(j) *Effective date*. This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

#### § 301.6320-1T [Removed]

Par. 3. Section 301.6320-1T is removed.

Robert E. Wenzel,  
*Deputy Commissioner of*  
*Internal Revenue.*

Approved January 14, 2002.

Mark A. Weinberger,  
*Assistant Secretary of the*  
*Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on January 17, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2002, 67 F.R. 2558)

## Section 6330.—Notice and Opportunity for Hearing Before Levy

26 CFR 301.6330-1: Notice and opportunity for hearing prior to levy.

T.D. 8980

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

#### Notice and Opportunity for Hearing before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy.

DATES: *Effective Date*: These regulations are effective on January 18, 2002.

APPLICABILITY DATE: These regulations apply to any levy which occurs on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622-3610 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) before levy. These final regulations implement certain changes made by section 3401 of

the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206; 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS intends to levy.

On January 22, 1999, temporary regulations (T.D. 8809, 1999–1 C.B. 478) implementing these changes made by section 3401 of RRA 1998 were published in the Federal Register (64 FR 3405). A notice of proposed rulemaking (REG–117620–98, 1999–1 C.B. 510) cross-referencing the temporary regulations was published on the same day in the Federal Register (64 FR 3462). No written comments were received within the 90-day period provided for comments, although two comments were received after this comment period.

Section 6320 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing after the filing of a notice of federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (T.D. 8810, 1999–1 C.B. 470) under section 6320 were published in the Federal Register (64 FR 3398). A notice of proposed rulemaking (REG–116824–98, 1999–1 C.B. 508) cross-referencing the temporary regulations was published on the same day in the Federal Register (64 FR 3461). Final regulations under section 6320 are being published in the Federal Register along with these final regulations under section 6330.

After consideration of the comments, the proposed regulations, with certain changes to reflect IRS administrative practice under section 6330, are adopted as final regulations. The comments and changes are discussed below.

### Summary of Comments

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (*i.e.*, persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process

notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax — *i.e.*, the taxpayer.

With respect to section 6330, the legislative history to section 6330 indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, or the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (applicable to both sections) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to

the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that persons should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

### Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the officials

required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer prior to levy on that taxpayer's property. To reflect the recent reorganization of the IRS, paragraphs (a)(1) and (2) of the final regulations eliminate references to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Examples, similar to those in the corresponding paragraphs of the final regulations under section 6320, have been added in paragraphs (b) and (c) of these final regulations to illustrate the provisions of those paragraphs.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS' administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted and where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to where in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations dealt with the question of whether there were any time limits on when a Notice of Determination must be issued. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—*i.e.*, the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying

tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6330(e) generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330, and also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6330 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may file NFTLs for the tax and tax period covered by the CDP Notice issued under section 6330, although such filings may give rise to issuance of a CDP Notice under section 6320. The IRS also may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods if the CDP requirements under section 6330 as to



those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS further is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6330 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period set out in the CDP Notice.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

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### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

2002-6 I.R.B.

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6330-1 is added under the undesignated centerheading "Seizure of Property for Collection of Taxes" to read as follows:

*§ 301.6330-1 Notice and opportunity for hearing prior to levy.*

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy (hereinafter referred to as the taxpayer) on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process (CDP) hearing with the Internal Revenue Service (IRS) Office of Appeals (Appeals). This pre-levy Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2.

(2) *Exceptions*—(i) *state tax refunds.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect state tax refunds owing to the taxpayer. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing

with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person to be notified under section 6330?

A-A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Q-A2. Will the IRS give notification to a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to, the taxpayer of the IRS' intention to issue a levy?

A-A2. No. Such a person is not the person described in section 6331(a)(1), but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A-A3. Yes. The notification of an intent to levy or of the issuance of a jeopardy or state tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q-A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19, 1999, with respect to the same tax and tax period?

A-A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after

January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q-A5. When will the IRS provide this notice?

A-A5. Beginning on January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of the IRS' intent to levy on property or rights to property, other than in state tax refund and jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a state tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q-A6. What must a pre-levy CDP Notice include?

A-A6. Pursuant to section 6330(a)(3), a pre-levy CDP Notice must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) Notification of the right to request a CDP hearing.
- (iii) A statement that the IRS intends to levy.
- (iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—
  - (A) The statutory provisions relating to the levy and sale of property;
  - (B) The procedures applicable to the levy and sale of property;
  - (C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;
  - (D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements); and
  - (E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q-A7. What must a post-levy CDP Notice include?

A-A7. A post-levy CDP Notice must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS has levied upon the taxpayer's state tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

- (A) The statutory provisions relating to the levy and sale of property;
- (B) The procedures applicable to the levy and sale of property;
- (C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;
- (D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements); and
- (E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q-A8. How will this pre-levy or post-levy notification under section 6330 be accomplished?

A-A8. The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information the IRS is required to provide, together with Form 12153, *Request for a Collection Due Process Hearing*, will be included with the CDP Notice.

(i) The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q-A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A-A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. See paragraph (c) of this section for when a request for a CDP hearing must be filed. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q-A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A-A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A-B3 of paragraph (b)(2) and Q&A-C8 of paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

*Example 1.* Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

*Example 2.* The same facts as in *Example 1*, except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the unpaid tax and tax periods covered by the pre-levy or post-levy CDP Notice provided to the taxpayer. The taxpayer must request

the CDP hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is the taxpayer entitled to a CDP hearing where a levy for state tax refunds is issued on or after January 19, 1999, even though the IRS had previously issued other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A-B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the type of tax and tax periods set forth in the state tax refund levy issued on or after January 19, 1999.

Q-B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice under section 6330 with respect to the unpaid tax and periods, provides subsequent notice to that taxpayer that the IRS intends to levy on property or rights to property of the taxpayer for the same tax and tax periods shown on the CDP Notice?

A-B2. No. Under section 6330, only the first pre-levy or post-levy CDP Notice with respect to the unpaid tax and tax periods entitles the taxpayer to request a CDP hearing. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals' determination with respect to levies relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances, a taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q-B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of

Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a CDP Notice under section 6330 was previously sent, is the taxpayer entitled to a section 6330 CDP hearing based on the second CDP Notice?

A-B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q-B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A-B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(3) *Example.* The following example illustrates the principles of this paragraph (b):

*Example.* Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. The IRS gives D a CDP Notice of intent to levy with respect to the 1997 tax liability. The IRS will not notify E of its intent to levy. The IRS is not required to notify E of its intent to levy although E holds property of individual D. E is not the taxpayer.

(c) *Requesting a CDP hearing—(1) In general.* When a taxpayer is entitled to a CDP hearing under section 6330, the CDP hearing must be requested during the 30-day period that commences the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153, *Request for a Collection Due Process Hearing*, that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1-800-829-3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing, which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative, by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the

written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

**Q-C3.** When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

**A-C3.** A taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period following the filing of the notice of federal tax lien (NFTL).

**Q-C4.** How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

**A-C4.** The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

**Q-C5.** Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

**A-C5.** No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day

period commencing the day after the date of the CDP Notice.

**Q-C6.** Where should the written request for a CDP hearing be sent?

**A-C6.** The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing their taxpayer identification number (SSN or TIN).

**Q-C7.** What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice issued under section 6330?

**A-C7.** If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

**Q-C8.** When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

**A-C8.** A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

**Q-C9.** Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

**A-C9.** Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

**(3) Examples.** The following examples illustrate the principles of this paragraph (c):

*Example 1.* The IRS mails a CDP Notice of intent to levy to individual A's last known address on June 24, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

*Example 2.* Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

*Example 3.* Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

*Example 4.* Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 24, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of

business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one pre-levy CDP hearing under section 6330 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP pre-levy hearing under section 6330 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6330 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a CDP hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other CDP hearings which the taxpayer has requested.

Q-D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A-D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax periods shown on the CDP Notice.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

Q-D6. How are CDP hearings conducted?

A-D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of a business taxpayer, the taxpayer's principal place of

business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6330(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice

of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to

challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A-E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination (under section 66 or section 6015) as to spousal defenses in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q-E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E5. No. A taxpayer is precluded by the doctrine of *res judicata* and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E7. What issues may a taxpayer raise in a CDP hearing under section 6330

if the taxpayer previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, certain matters

that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q-E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the issuance of a notice of intention to levy, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other

precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decision made by the Appeals officer on such precluded issues is not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

*Example 1.* The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

*Example 2.* Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

*Example 3.* The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the



Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general*. The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the Notice of Determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written with-

drawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

Q-G3. What, if any, enforcement actions can the IRS take during the suspension period?

A-G3. Section 6330(e) provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. The IRS, however, may levy for other taxes and periods not covered by the CDP Notice if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods and taxes, whether or not covered by the CDP Notice issued under section 6330, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting

any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples*. The following examples illustrate the principles of this paragraph (g):

*Example 1*. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

*Example 2*. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—

(1) *In general*. The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (B)?

A-H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax periods specified in the CDP Notice. Any subsequent consideration by



Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general*. A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an “equivalent hearing.” The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 sus-

pending if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q-I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals’ denial of relief under section 6015. Such review must be sought within 90 days of the issuance of

Appeals’ determination on those issues, as provided by section 6015(e).

(j) *Effective date*. This section is applicable with respect to any levy which occurs on or after January 19, 1999.

#### **§ 301.6330-1T [Removed]**

Par. 3. Section 301.6330-1T is removed.

Robert E. Wenzel,  
*Deputy Commissioner of  
Internal Revenue.*

Approved January 14, 2002

Mark A. Weinberger,  
*Assistant Secretary of the  
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on January 17, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2002, 67 F.R. 2549)

## **Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## **Section 7872.—Treatment of Loans with Below-Market Interest Rates**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2002. See Rev. Rul. 2002-5, page 461.

## Part III. Administrative, Procedural, and Miscellaneous

### Relief in Connection With Employee Benefit Plans Because of the September 11, 2001, Terrorist Attack

#### Notice 2002-7

##### I. PURPOSE

The Internal Revenue Service, the Department of Labor's Pension and Welfare Benefits Administration ("PWBA") and the Pension Benefit Guaranty Corporation ("PBGC") provide relief in connection with employee benefit plans because of the September 11, 2001, terrorist attack.

This notice supplements and expands the tax relief granted by the Service under § 7508A of the Internal Revenue Code ("Code") in Notice 2001-61 (2001-40 I.R.B. 305) and Notice 2001-68 (2001-47 I.R.B. 504) for taxpayers affected by the September 11, 2001, terrorist attack ("Terrorist Attack"). On January 23, 2002, the President signed into law the Victims of Terrorism Tax Relief Act of 2001 (the "Act"). Section 112 of the Act amended § 7508A of the Code to provide that, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster or a terroristic or military action, the Secretary of the Treasury may prescribe a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed. No plan shall be treated as failing to be operated in accordance with its terms solely because the plan disregards any period by reason of such relief. Section 112 of the Act made parallel changes to Titles I and IV of the Employee Retirement Security Act of 1974, Pub. L. No. 93-406 ("ERISA").

##### II. BACKGROUND

Section 412(a) of the Code and § 302(a) of ERISA provide that, in order for a plan to meet the minimum funding standards of the Code and ERISA, the plan must not have an accumulated fund-

ing deficiency as of the end of each plan year. Section 412(c)(10) of the Code and § 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any contributions for a plan year made by an employer by the end of the 8½-month period following the end of such plan year are deemed to have been made on the last day of the year.

Section 412(d) of the Code and § 303 of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive such a waiver, § 412(d)(4) of the Code and § 303(d)(1) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Thus, for example, in order for a plan to receive a waiver of the minimum funding requirements for the plan year ending on December 31, 2000, the sponsor of the plan must have submitted an application by March 15, 2001.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA require that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2001 calendar year are April 15, 2001, July 15, 2001, October 15, 2001, and January 15, 2002.

Section 412(n)(1) of the Code and § 302(f)(1) of ERISA provide that, with respect to certain plans with a funded current liability percentage of less than 100 percent, if the required installments or any other payment required under those sections are not made to the plan before the due date for such installment or other payment, and if the aggregate unpaid balance of such installments or other payments exceeds \$1,000,000, then there

shall be a lien in favor of the plan. The lien may be perfected by the PBGC.

Under the PBGC's premium regulations, contributions may be taken into account for determining a plan's unfunded vested benefits for a premium payment year or a plan's entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year if the contributions (1) are for a plan year before the premium payment year and (2) are made on or before the earlier of (a) the due date for payment of the variable-rate premium or (b) the date the variable-rate premium is paid (29 CFR §§ 4006.4(b)(2)(iv) and 4006.5(a)(5)).

##### III. RELIEF

###### A. For all plans:

1. If the dates described in § 412(c)(10) or 412(m) of the Code and § 302(c)(10) or 302(e) of ERISA for making contributions fell within the period beginning on September 11, 2001, and ending on September 23, 2001, then the date such contributions must be made is postponed to September 24, 2001.

2. If the date described in § 412(d)(4) of the Code and § 303(d)(1) of ERISA for applying for a waiver fell within the period beginning on March 15, 2001, and ending on February 28, 2002, then the date such waiver must be applied for is postponed to March 1, 2002.

B. In addition to the relief in Section III.A., above, for plans that are directly affected by the Terrorist Attack, if the date described in § 412(c)(10) or 412(m) of the Code and § 302(c)(10) or 302(e) of ERISA for making contributions fell within the period beginning on September 11, 2001, and ending on February 11, 2002, then the date such contributions must be made is postponed to February 12, 2002.

C. For purposes of the notice, a plan will be considered to be directly affected by the Terrorist Attack if any of the following were located at the time of the attack in the area consisting of the five New York counties of Bronx, Kings, New York, Queens, and Richmond: the principal place of business of any employer that maintains the plan; the office of the plan

or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of an attorney, enrolled actuary, certified public accountant or other advisor retained by the plan or the employer at the time of the Terrorist Attack to determine the funding requirements described in section III.B above for the period described in such section. A plan will also be considered to be directly affected by the Terrorist Attack if the enrolled actuary for the plan was killed or injured or is missing as a result of the Terrorist Attack.

D. The following rule applies under Title IV of ERISA for purposes of determining a plan's unfunded vested benefits for a premium payment year or entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year. For any plan for which this notice extends a date described in § 412(c)(10) of the Code and § 302(c)(10) of ERISA, contributions for any plan year before the premium payment year may be taken into account if they are made on or before the earlier of (1) the extended § 412(c)(10)/§ 302(c)(10) date under this notice or (2) the date of the plan's variable-rate premium filing (or, if applicable, amended variable-rate premium filing) for the premium payment year.

#### DRAFTING INFORMATION

The principal authors of this notice are James E. Holland, Jr. and Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Holland may be reached at (202) 283-9699 (not a toll-free number).

## Qualified 501(c)(3) Bonds

### Notice 2002-10

#### PURPOSE

This notice clarifies the application of §§ 145(a)(2) and 514 of the Internal Revenue

Code to the investment of gross proceeds of qualified 501(c)(3) bonds described in § 145.

#### BACKGROUND

Section 103(a) provides that, with certain exceptions, gross income does not include interest on any state or local bond. One type of bond that is eligible for the exclusion under § 103(a) is a qualified 501(c)(3) bond described in § 145 that satisfies certain requirements, including the requirements contained in § 148.

In general, a qualified 501(c)(3) bond is a bond at least 95 percent of the net proceeds of which are to be used by no person other than an organization described in § 501(c)(3) (a "501(c)(3) organization") or a governmental unit. However, under § 145(a)(2), a bond is not a qualified 501(c)(3) bond if more than 5 percent of the net proceeds of the issue of which it is a part are to be used by a 501(c)(3) organization in an unrelated trade or business under § 513(a).

With certain exceptions, § 148 and the regulations thereunder prohibit the use of gross proceeds of an issue of qualified 501(c)(3) bonds to acquire investment property (as defined in § 148(b)) that produces a yield that materially exceeds the yield on the issue. Section 1.148-1(b) of the Income Tax Regulations defines "gross proceeds" to include, among other things, amounts received from the sale of the issue, amounts received from investing proceeds of the issue, and certain other amounts with a nexus to the issue.

Section 501(a) exempts 501(c)(3) organizations from federal income taxation. However, notwithstanding this general exemption, § 511(a) imposes a tax on the unrelated business taxable income, as defined in § 512, of 501(c)(3) organizations, including certain income from debt-financed property, as defined in § 514.

#### DISCUSSION

Questions have arisen regarding the application of §§ 145(a)(2) and 514 to the investment of gross proceeds of qualified 501(c)(3) bonds in a manner that complies with the requirements of § 148. This notice clarifies that the use of gross proceeds of an issue of qualified 501(c)(3) bonds to acquire investments (as defined in § 1.148-1) in a manner that complies

with § 148 does not constitute an unrelated trade or business for purposes of § 145(a)(2) and does not result in income from debt-financed property under § 514. This notice does not affect the determination of whether the use of property financed with expenditures of proceeds of bonds constitutes an unrelated trade or business for purposes of § 145(a)(2) or results in unrelated business taxable income under § 512.

#### DRAFTING INFORMATION

The principal authors of this notice are Charles P. Barrett of the Tax Exempt and Government Entities Division, Exempt Organizations, and Sunita Lough of the Tax Exempt and Government Entities Division, Tax Exempt Bonds. For further information regarding this notice, please contact Mr. Barrett at (202) 283-8944 (not a toll-free number) or Ms. Lough at (202) 283-9774 (not a toll-free call).

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*26 CFR 601.201: Rulings and determination letters. (Also Part I, §§ 7701; 301.7701-1; 301.7701-2, 301.7701-3, 301.9100-1, 301.9100-3.)*

## Rev. Proc. 2002-15

#### SECTION 1. PURPOSE

This revenue procedure provides guidance under § 7701 of the Internal Revenue Code for a newly formed entity that requests relief for a late initial classification election filed within 6 months of the due date of the initial election.

#### SECTION 2. BACKGROUND

.01 Section 7701 provides definitions for business entities and their owners for federal tax purposes.

.02 Section 301.7701-1(a) of the Procedure and Administration Regulations provides general rules for the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law. Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate

entities is determined under § 301.7701-2, § 301.7701-3, and § 301.7701-4 unless a provision of the Code provides for special treatment of that organization.

.03 Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner) that is not properly classified as a trust or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded as an entity separate from its owner. Section 301.7701-2(b) sets forth those business entities that are considered corporations for federal tax purposes.

.04 Section 301.7701-3 provides that a business entity not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) is able to choose its classification for federal tax purposes. Under § 301.7701-3(b)(1) a domestic eligible entity is, in the absence of an election otherwise, a partnership if it has two or more members, and disregarded as an entity separate from its owner if it has a single owner. Section 301.7701-3(b)(2) provides generally that, in the absence of an election otherwise, a foreign eligible entity is (a) a partnership if it has two or more members and at least one member does not have limited liability, (b) an association if all its members have limited liability, or (c) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

.05 Section 301.7701-3(c)(1)(i) provides generally that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, *Entity Classification Election*, with the service center designated on Form 8832. Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed. If an election

specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

.06 Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election or certain statutory elections under all subtitles of the Code, except subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. An entity classification election made pursuant to § 301.7701-3(c) is a regulatory election.

.07 The Commissioner has authority under § 301.9100-1 and § 301.9100-3 to grant an extension of time if a taxpayer fails to file a timely election under § 301.7701-3(c). Section 301.9100-3 provides that the Commissioner will grant an extension of time when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

### SECTION 3. SCOPE

This revenue procedure provides a simplified method to request relief for certain late initial classification elections. An initial classification election is an election by an eligible entity newly formed under local law to be classified effective on the date of its formation as other than the default classification provided under §§ 301.7701-3(b)(1) and (2). This procedure is in lieu of the private letter ruling procedure that is used to obtain relief for a late entity classification election under § 301.9100-1 through § 301.9100-3. Accordingly, user fees do not apply to corrective action under this revenue procedure. An entity that is not eligible for relief under this revenue procedure, or is denied relief by the service center, may request relief by applying for a private letter ruling. The procedural

requirements for requesting a private letter ruling are described in Rev. Proc. 2002-1 (2002-1 I.R.B. 1) (or its successor). This revenue procedure does not apply to a subsequent election to change the classification of an entity.

### SECTION 4. RELIEF FOR LATE INITIAL CLASSIFICATION ELECTIONS

.01 *Eligibility for Relief.* An entity is eligible for relief under section 4.03 of this revenue procedure for a late initial classification election if the following requirements are met: (1) the entity failed to obtain its desired classification as of the date of its formation solely because Form 8832 was not filed timely under § 301.7701-3(c)(1); (2) the due date for the tax return of the entity’s default classification (excluding extensions) for the taxable year beginning with the date of the entity’s formation has not passed; and (3) the entity has reasonable cause for its failure to timely make the initial entity classification election.

.02 *Procedural Requirements for Requesting Relief.* Within 6 months of the original due date for the initial classification election (within 6 months and 75 days of the entity’s formation), the newly formed entity must file with the applicable service center (determined in accordance with the instructions to Form 8832) a completed Form 8832, signed in accordance with § 301.7701-3(c)(2). The Form 8832 must state at the top of the document “FILED PURSUANT TO REV. PROC. 2002-15.” Attached to the Form 8832 must be a statement explaining the reason for the failure to file a timely initial classification election.

.03 *Relief for Late Entity Classification Elections.* Upon receipt of a completed application requesting relief under this revenue procedure, the Internal Revenue Service will determine whether the requirements for granting additional time have been satisfied and will notify the entity of the result of its determination.

### SECTION 5. EFFECTIVE DATE

This revenue procedure generally applies to all ruling requests pending in the national office on February 11, 2002, the date of publication of this revenue

procedure in the Internal Revenue Bulletin, and to requests for relief received thereafter.

#### SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1771.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in Section 4.01. This

information is required to be submitted to the applicable service center in order to obtain relief for late initial classification elections. This information will be used to determine whether the eligibility requirements for obtaining relief have been met. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 100 hours.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents is 100.

The estimated annual frequency of responses is one.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Beverly M. Katz of the Office of Associate Chief Counsel (Passthroughs and Special Industries) and David J. Sotos of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Katz at (202) 622-3050 (not a toll-free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

#### Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Immediate Payment

##### REG-159079-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these proposed regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations on this subject (T.D. 8977) in this issue of the Bulletin, also serves as the text of these proposed regulations set forth in this cross-referenced notice of proposed rulemaking.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-159079-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-159079-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via

the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS internet site at [http://irs.gov/tax\\_regs/reglist.html](http://irs.gov/tax_regs/reglist.html).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Sambur at (202) 622-3840; concerning submissions, Donna Poindexter, (202) 622-7180 (not a toll-free number).

##### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR parts 1 and 301. The temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

##### PART 1 — INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 2. Section 1.1441-1 is amended as follows:

*§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.*

[The text of the proposed amendments to this section is the same as the text of § 1.1441-1T published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.1441-6 is amended as follows:

*§ 1.1441-6 Claim of reduced withholding under an income tax treaty.*

[The text of the proposed amendments to this section is the same as the text of § 1.1441-6T published elsewhere in this issue of the **Federal Register**].

PART 301—ADMINISTRATIVE PRACTICES AND PROCEDURE, Income Taxes, Reporting and Recordkeeping requirements

Par. 4. The authority citation for part 301 continues to read in part as follows:  
Authority: 26 U.S.C. 7805 \*\*\*

Par. 5. Section 301.6109-1 is amended as follows:

*§ 301.6109-1 Identifying numbers.*

[The text of the proposed amendments to this section is the same as the text of § 301.6109-1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on January 16, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2002, 67 F.R. 2387)

## Extension of Deadline for Comments to Notice 2001-72 and Notice 2001-73

### Announcement 2002-8

The purpose of this announcement is to extend the deadline for comments to the proposed administrative rules set forth in Notice 2001-72 (2001-49 I.R.B. 548) and Notice 2001-73 (2001-49 I.R.B. 549) until April 23, 2002.

#### Background

On November 14, 2001, the Service issued proposed regulations entitled Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act and Collection of Income Tax at Source to Statutory Stock Options (66 Fed. Reg. 57023). The proposed regu-

lations provided rules regarding the application of employment taxes to statutory stock options, *i.e.* incentive stock options under section 422 of the Internal Revenue Code (Code) and options granted pursuant to an employee stock purchase plan under section 423 of the Code. As provided in the proposed regulations, written comments were required to be received by February 14, 2002. In addition, outlines of topics to be discussed at the public hearing were also required to be received by February 14, 2002, with the hearing to be held March 7, 2002.

The Service has extended the deadline for written comments on the proposed regulations so that comments must be received by April 23, 2002. Outlines of topics to be discussed at the public hearing must also be received by April 23, 2002, with the hearing rescheduled for May 14, 2002.

In conjunction with the issuance of the proposed regulations, the Service issued two Notices. Notice 2001-72 proposed rules regarding an employer's federal income tax withholding and reporting obligations upon the disposition of stock acquired pursuant to the exercise of a statutory stock option. Notice 2001-73 proposed rules of administrative convenience regarding the application of the Federal Insurance Contributions Act and Federal Unemployment Tax Act upon the exercise of a statutory stock option. Consistent with the proposed regulations, comments to Notice 2001-72 and Notice 2001-73 were due on February 14, 2002.

#### Extension of Deadline for Comments to Notice 2001-72 and Notice 2001-73

Consistent with the deadline for written comments to the proposed regulations, comments to Notice 2001-72 and Notice 2001-73 must be received by April 23, 2002. All comments will be available for copying and public inspection. Comments should reference Notice 2001-72 and/or Notice 2001-73 and be addressed to:

Associate Chief Counsel  
(Tax Exempt and Government Entities)  
CC:TEGE  
ATTN: Employment Taxes and Statutory Stock Options  
Room 5214

Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

#### Drafting Information

The principal author of this announcement is Stephen Tackney of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Stephen Tackney at (202) 622-6040 (not a toll-free call).

## Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options; Hearing

### Announcement 2002-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing; extension of time to submit written comments and outlines of oral comments.

SUMMARY: This document changes the date of the public hearing on the proposed regulations (REG-142686-01, 2001-49 I.R.B. 561) that relate to incentive stock options and options granted under employee stock purchase plans and supercedes the notice of public hearing published in the **Federal Register** on January 28, 2002. It also extends the time to submit written comments and outlines of oral comments for the hearing.

DATES: The public hearing will be held May 14, 2002, beginning at 10 a.m. Written comments and outlines of oral comments must be received by April 23, 2002.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Send submissions to: CC:ITA:RU (REG-142686-01), Room 5226, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to

CC:ITA:RU (REG-142686-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/tax\\_regs/regslst.html](http://www.irs.ustreas.gov/tax_regs/regslst.html).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622-6040; concerning submissions of comments, the hearing,

and/or to be placed on the building access list to attend the hearing, Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001, (REG-142686-01, 2001-49 I.R.B. 561 [66 FR 57023]), announced that a public hearing on the proposed regulations relating to incentive stock options and options granted under employee

stock purchase plans would be held on March 7, 2002, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Subsequently, the date of the public hearing has changed to May 14, 2002, at 10 a.m. in the IRS Auditorium. Written comments and outlines of oral comments must be received by April 23, 2002.

Guy Traynor,  
Acting Chief, Regulations Unit,  
*Associate Chief Counsel*  
*(Income Tax and Accounting)*.

(Filed by the Office of the Federal Register on January 25, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 28, 2002, 67 F.R. 3846)



# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it

applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
FR—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.

PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.

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<sup>2</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.





